

COMMENT

THE FAILURE OF THE WORK INCENTIVE
(WIN) PROGRAM

I. INTRODUCTION

Shortly after the Work Incentive Program (WIN)¹ was enacted as part of the 1967 amendments to title IV of the Social Security Act, law review commentary pessimistically assessed its prospects for success.² This Comment will confirm the predictions of failure: enough facts are in to point up WIN as yet another ill-conceived program designed to counter poverty in America. The lesson of WIN is not that a congressional program can fail, but rather that an antipoverty program founded upon the same faulty premises of previous unsuccessful schemes was doomed from the outset.

In broadest terms, WIN is a "service" program as distinguished from one providing purely monetary aid to the poor. Originally entitled "Grants to States for Aid to Dependent Children (ADC), title IV was enacted to enable "each State to furnish *financial* assistance, as far as practicable under the conditions in such State, to needy dependent children."³ Matching funds for social services to strengthen the family unit were first authorized in 1956,⁴ when payments for the support of parents of dependent children were also first provided.⁵ Section 401, setting forth the purposes of the Act, was amended to reflect this profound change:

[To encourage] the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and other services, as far as prac-

¹ Act of Jan. 2, 1968, Pub. L. No. 90-248, § 204, 81 Stat. 884-92, *amending* 42 U.S.C. § 602(a) (1964) (codified at 42 U.S.C. §§ 602(a)(8) (19), 630-44 (Supp. V, 1970)). Although enacted on Jan. 2, 1968, the Act is entitled "Social Security Amendments of 1967."

² See Note, *Compulsory Work for Welfare Recipients Under the Social Security Amendments of 1967*, 4 COLUM. J.L. & SOC. PROB. 197 (1968); Comment, *Public Welfare "WIN" Program: Arm-Twisting Incentives*, 117 U. PA. L. REV. 1062 (1969).

³ Social Security Act of 1935, ch. 531, § 401, 49 Stat. 627, *as amended*, 42 U.S.C. § 601 (Supp. V, 1970) (emphasis added). Provision of solely financial aid for the support of needy children was the paramount concern of the Act. See, e.g., H.R. REP. NO. 615, 74th Cong., 1st Sess. 9-12 (1935); S. REP. NO. 628, 74th Cong., 1st Sess. 16-17 (1935).

⁴ Act of Aug. 1, 1956, ch. 836, § 312, 70 Stat. 848-49, *as amended*, 42 U.S.C. §§ 601, 602(a)(13), 603(a) (Supp. V, 1970). Services to recipients of ADC were provided long before authorized by statute in 1956: "The first concrete federal incentive for provision of 'services' appeared in State Letter 25 of 1943, which authorized inclusion of costs of services in state administrative expenses for federal matching." Gilbert, *Policy-Making in Public Welfare: The 1962 Amendments*, 81 POL. SCI. Q. 196, 201 (1966) (footnote omitted).

⁵ Act of Aug. 1, 1956, ch. 836, §§ 312(a), (c), 70 Stat. 848-49, *as amended*, 42 U.S.C. §§ 601, 603(a) (Supp. V, 1970).

licable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection⁶

Social services to the family and financial support of the parents of ADC children were intended to improve the home environment of needy children; a second goal was to boost adult ADC recipients toward economic independence.⁷ The states were not required to implement the authorized services.

The 1962 public welfare amendments⁸ placed heavy emphasis on service programs to the family,⁹ and in effect compelled the states to provide them.¹⁰ The services were intended

to improve the rehabilitative aspects of the public assistance programs particularly in stimulating constructive services designed to help families and individuals to attain self-sufficiency. . . . These social services . . . are designed to help families and individuals to become self-supporting rather than dependent upon welfare checks.¹¹

The name of the program was accordingly changed to "Grants to States for Aid and Services to Needy Families with Children," and the assistance provided was designated "Aid to Families with Dependent Children" (AFDC).¹²

The 1962 amendments also authorized funding for a new program¹³ designed to

⁶ *Id.* § 312(a), 70 Stat. 848-49, as amended, 42 U.S.C. § 601 (Supp. V, 1970).

⁷ The Senate committee report explained:

Services that assist families and individuals to attain the maximum economic and personal independence of which they are capable provide a more satisfactory way of living for the recipients affected. To the extent that they can remove or ameliorate the causes of dependency they will decrease the time that assistance is needed and the amounts needed.

S. REP. NO. 2133, 84th Cong., 2d Sess. 29 (1956).

⁸ Act of July 25, 1962, Pub. L. No. 87-543, 76 Stat. 172-208 (codified in scattered sections of ch. 7, 42 U.S.C.).

⁹ The services envisioned were primarily those of casework counseling. That is, the welfare caseworker became obliged to do more than simply provide a check: he was supposed to become more involved in solving the recipient family's problems, be they childrearing, housework, budgeting, or whatever. See S. REP. NO. 1589, 87th Cong., 2d Sess. 7 (1962).

¹⁰ The federal government was to bear 75% of the cost of basic rehabilitative services. A state not providing such services would lose half of its federal funding for its entire welfare plan. Act of July 25, 1962, Pub. L. No. 87-543, §§ 101(a)(2), (b)(1)(B), 76 Stat. 174-76, 179, as amended, 42 U.S.C. §§ 303(a)(4)-(5) (1964), as amended, (Supp. V, 1970); S. REP. NO. 1589, *supra* note 9, at 7.

¹¹ S. REP. NO. 1589, *supra* note 9, at 7.

¹² Act of July 25, 1962, Pub. L. No. 87-543, §§ 104(a)(1)-(3), 76 Stat. 185-86.

¹³ State or locally financed work-related programs did exist prior to 1962. S. REP. NO. 1589, *supra* note 9, at 11.

[encourage,] through community work and training programs [CWT] of a constructive nature, the conservation of work skills and the development of new skills for individuals who . . . are receiving aid to families with dependent children¹⁴

The work projects were to be useful and the workers not exploited:

[T]he payment for the work must be at rates not less than the minimum rate under State law, or not less than the prevailing rates on similar work in the community; the projects will have to serve a useful purpose, not result in the displacement of regular workers or substitute for work that would otherwise be performed by local workers¹⁵

Although the CWT program was primarily for unemployed fathers, states were allowed to open the program to eligible mothers.¹⁶

Five years after the enactment of the rehabilitative services and CWT provisions, the 1967 Social Security amendments—including WIN—were passed without serious congressional criticism of conditioning welfare eligibility on a willingness to work. The goal, as stated in section 430 of the Act, was to restore the families of individuals enrolled in the program to

independence and useful roles in their communities. It is expected that individuals participating in the program . . . will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.¹⁷

One tenuous assumption, then, is explicit in the Act: that a working parent inevitably provides a good example—that is, imparts respect for a work ethic—to the children in the family. Other assumptions behind the Act, to varying degrees more implicit, are less controversially erroneous. Congress apparently believed that many AFDC

¹⁴ Act of July 25, 1962, Pub. L. No. 87-543, § 105(a), 76 Stat. 186. This provision became 42 U.S.C. § 609, which became inoperative after June 30, 1968. Act of Jan. 2, 1968, Pub. L. No. 90-248, § 204(c) (2), 81 Stat. 892.

¹⁵ S. REP. No. 1589, *supra* note 9, at 12; see Act of July 25, 1962, Pub. L. No. 87-543, § 105(a), 76 Stat. 186-87, *discussed at* note 14 *supra*.

¹⁶ S. REP. No. 1589, *supra* note 9, at 12.

¹⁷ Act of Jan. 2, 1968, Pub. L. No. 90-248, § 204(a), 81 Stat. 884 (codified at 42 U.S.C. § 630 (Supp. V, 1970)).

recipients¹⁸ were not working because of either indolence¹⁹ or lack of training;²⁰ that is, many recipients were immediately employable, or at least immediately trainable for work. Another assumption was that WIN's training program would raise the vocational skills of recipients to employable levels; another, that the economy is sufficiently flexible to absorb immediately recipients who could work right away as well as recipients whom the program would train; and finally, that the jobs obtained through the WIN program would enable the recipients to

¹⁸ The precise number of expected WIN trainees was never definitively set. Labor Department estimates to the conferees on the WIN amendments predicted a total of 757,000 trained WIN graduates located in employment by the end of fiscal 1972. SENATE COMM. ON FINANCE & HOUSE COMM. ON WAYS & MEANS, 90TH CONG., 1ST SESS., SUMMARY OF SOCIAL SECURITY AMENDMENTS OF 1967, at 29 (Comm. Print 1967); CONF. REP. NO. 1030, 90TH CONG., 1ST SESS. 59 (1967). There were other, higher estimates. The Senate version of the bill was expected to produce 860,000 WIN trainees by the end of fiscal 1972. S. REP. NO. 744, 90TH CONG., 1ST SESS. 153 (1967). HEW also issued high estimates:

From 1969 to 1974, an estimated 5.4 million AFDC recipients are expected to become "potentially eligible" to enter the program. If the WIN program is expanded promptly and operated at a maximum capacity, it may be assumed that all of these "potentially eligible" persons could be enrolled sometime during this 6-year period.

F. Arner, *The Work Incentive (WIN) Program: Establishment and Early Implementation* 69, June 5, 1969 (Library of Congress Legislative Reference Service ed. 378) (quoting U.S. Dep't of Health, Educ., & Welfare, *Health, Education, and Welfare Accomplishments, 1963-68, Problems and Challenges, and a Look to the Future* (1968)). "Underlying these estimates is an HEW assumption of 80 to 85% participation of the mothers and a somewhat higher percentage participation of the fathers and out-of-school youth." F. Arner, *supra* at 69.

As a result of their employment, an estimated 900,000 to 1 million persons might be expected to secure employment and become fully self-supporting. When account is taken of their families, these employed persons could represent a reduction of 3 to 4 million persons on AFDC rolls over the 6-year period.

Id. 70 (quoting HEW Accomplishments, *supra* at 112). See also Auerbach Corporation, Summary of Remarks by David Miller & William Cameron at an Interagency Briefing on the Work Incentive Program (WIN) at the Department of Labor 3, Sept. 17, 1969 (reading the WIN program to assume that, at least in theory, all AFDC recipients are employable or trainable) [hereinafter cited as Auerbach Briefing]. The Auerbach Corporation was engaged by both HEW and the Dep't of Labor to make an intensive evaluation of WIN programs across the country. *Id.* 1.

¹⁹ Of course, welfare recipients have never been congressionally branded as explicitly "lazy," but the intimation is not lacking. See, e.g., *Hearings on H.R. 12080 Before the Senate Comm. on Finance*, 90th Cong., 1st Sess., pt. 2, at 940 (1967) (remarks of Chairman Long) [hereinafter cited as *Senate WIN Hearings*]:

There are a great number of people drawing public assistance who could be doing something more, and we ought to be affirmatively moving those people to doing the best things we can put them to, even if that is nothing more than helping to get rid of the rats, or to get the garbage out of the place. It is still better than leaving the rats around and having the place smelling.

The mandatory nature of WIN is perhaps of itself an indication that Congress believed that a voluntary program would lack participants because many recipients are lazy.

²⁰ Based on the work experience programs that have been operating for several years, we have every reason to believe that there are many more individuals who want to be and can be trained and employed.

Id., pt. 1, at 215 (remarks of Wilbur J. Cohen, Undersec'y of HEW). "[A] great many mothers, as well as virtually all unemployed fathers, of AFDC children can be trained for a place in productive employment." H.R. REP. NO. 544, 90TH CONG., 1ST SESS. 97 (1967).

earn enough to leave the relief rolls.²¹ Certainly a congressional program may succeed despite its incorrect underlying assumptions. But serendipity is the exception; the failure of the WIN program is tied intimately to its faulty premises. Perhaps most disappointing about the WIN program is neither its failure nor its unwarranted assumptions, but its reflection of a misconceived belief, apparently endemic to congressional as well as popular thinking, that poverty is a manifestation of a personal failure to live according to an American model, rather than a problem produced by societal malfunctions and remediable only by societal reconstruction.

The next section of this Comment will describe the operation of the WIN program as planned and as implemented. Then the assumptions listed above as immediately pertinent to WIN will be measured against the program's current produce.

II. THE MECHANICS OF WIN

WIN is administered by HEW and the Department of Labor. Each department is responsible for different aspects of the program. The process begins when the state welfare agency evaluates adult AFDC recipients to determine which are "appropriate"²² for referral to the program. Federal regulations require that the states evaluate individuals in a specified order,²³ beginning with AFDC unemployed fathers. Mothers and other caretaker relatives who volunteer for WIN and are currently in a program under title V of the Economic Opportunity Act²⁴ or in a CWT program are evaluated next. Presumably these individuals are already motivated to work or to be trained and have access to child care programs. The third group comprises "[d]ependent children and essential persons age 16 or over who are not in school, at work, or in training, and for whom there are no educational plans under consideration."²⁵ Mothers who volunteer but are not already in existing training programs constitute the next group if they have no pre-school-age children, and the fifth group if they do. Thereafter, the state welfare agency may evaluate for referral any other recipients.

Of the five groups, the regulations require assessment of only the first (unemployed fathers) and third (youth and essential persons 16 or over).²⁶ States need not assess any other individuals, but if they do, they must follow the prescribed order.

²¹ See, e.g., F. Arner, *supra* note 18, at 70 (quoting HEW Accomplishments, *supra* note 18, at 112); S. REP. No. 744, *supra* note 18, at 158 ("[T]his provision will furnish incentives for members of public assistance to take employment and, in many cases, increase their earnings to the point where they become self-supporting.").

²² Social Security Act §§ 402(a) (19) (A) (i), (ii), 42 U.S.C. §§ 602(a) (19) (A) (i), (ii) (Supp. V, 1970).

²³ U.S. Dep't of Health, Educ., & Welfare, Guidelines for the Work Incentive Program § 61.1 (1969).

²⁴ 42 U.S.C. §§ 2921-33 (Supp. V, 1970).

²⁵ 45 C.F.R. § 220.35(a) (3) (iii) (1970).

²⁶ *Id.* §§ 220.35(a) (iv)-(v).

Welfare caseworkers interview recipients and ostensibly select for enrollment in WIN only those most likely to succeed in the program.²⁷ The caseworker is familiar with the history, work experience, family needs, emotional stability, and other factors relevant to the recipient's appropriateness. But caseworkers are not manpower employment specialists and the standards of employability or trainability are not objective; thus the complex decision of appropriateness is left largely to the caseworker's intuition. The number of recipients referred by the state welfare agencies as appropriate consequently varies greatly from state to state,²⁸ and only 43.9 percent of those referred by the state agencies are ultimately enrolled in WIN.²⁹

Recipients found appropriate by the state agencies are next referred³⁰ to the Local Bureau of Employment Services (under the supervision of the Department of Labor), which conducts its own assessment of appropriateness. This reevaluation determines whether the individuals are immediately employable or suitable for other manpower programs or need specialized services³¹ (or are inappropriate for WIN, in which case they are referred back to the welfare agencies). This assessment is conducted by an employability team comprising a counselor, manpower training specialist, job developer, and coach. The team draws up an employability development plan for each individual which "will best meet the needs for employment in a job the trainee desires and is capable of performing. The team concept provides for a controlled caseload allowing sufficient time for work with the trainees."³²

²⁷ The selection process is described in Manpower Admin., U.S. Dep't of Labor, Bureau of Work and Training Programs Manual ch. 9 (WIN Handbook), § 19 (1968) [hereinafter cited as BWTP Manual].

²⁸ The variations among the states in finding AFDC recipients appropriate are staggering. Nevada and New Hampshire are the lowest states, finding only 5.8% and 6.1% of their recipients appropriate; West Virginia and Oregon are highest, finding 93.0% and 91.0% appropriate. U.S. Dep't of Health, Educ., & Welfare, Social and Rehabilitation Services Monthly Status Reports for WIN (May 31, 1970) [hereinafter cited as Monthly Status Reports for WIN (May 31, 1970)].

²⁹ *Id.*

³⁰ Many recipients considered appropriate for referral by the state agencies are not actually referred. See text accompanying note 67 *infra* (table I). The disparity may be explained in part by

the fact that some individuals found appropriate become inappropriate before they can be referred; and a reluctance on the part of the local welfare agencies to refer additional individuals as enrollments approach the maximum number of training spaces available.

J. Lynch, Statistical Data on Welfare Aspects of Work Incentive Program for AFDC Recipients, Selected Periods Within Fiscal Year 1969, at 2, 1969 (Nat'l Center for Social Statistics, Social & Rehabilitation Service, U.S. Dep't of Health, Educ., & Welfare, Rep. H-2(69)). As of March 1970, however, these factors only accounted for approximately 25% of the appropriate AFDC recipients never ultimately referred to WIN by the local Bureau after reassessment. STAFF OF THE SENATE COMM. ON FINANCE, 91ST CONG., 2D SESS., MATERIAL RELATED TO WORK AND TRAINING PROVISIONS OF ADMINISTRATION REVISION OF H.R. 16311, at 5 (Comm. Print 1970) [hereinafter cited as FINANCE COMM. STAFF MATERIAL].

³¹ BWTP Manual §§ 511-12.

³² U.S. Dep't of Labor, Work Incentive Briefing Paper 2, Dec. 15, 1969.

As the employability development plan progresses, individuals are separated into three "priorities."³³ Those who are immediately employable and have work skills needed in the local labor market, or who can enter on-the-job training positions in existing federal programs,³⁴ are either found employment or placed in federal manpower programs. These enrollees receive supportive services (such as counseling) for a minimum of ninety days³⁵ and, in computing their welfare needs, may disregard the first thirty dollars of their earned income and one third of the remainder.³⁶

The second priority includes enrollees needing special training to be employable.³⁷ Enrollees in this priority fall into either occupational or pre-occupational training. The former includes union apprenticeships, advanced institutional training in a particular skill,³⁸ or institutional training in a new basic skill such as simple typing or filing,³⁹ or training for a job requiring no formal skill,⁴⁰ such as nurse's or teacher's aide. Pre-occupational programs provide extensive preparatory training, including basic orientation to work experience⁴¹ (how to act during a job interview, how to relate to fellow employees, employers' expectations), exploration of ability by job tryouts and work samples,⁴² and acquisition of basic educational tools.⁴³ All enrollees in this second priority receive a monthly incentive payment of thirty dollars in addition to their welfare grants.⁴⁴

Recipients who cannot benefit from training and for whom jobs in the economy cannot be located—but who have nonetheless been found appropriate for WIN—are placed in "special works projects," the third priority. Public agencies or private nonprofit agencies organ-

³³ S. REP. No. 744, *supra* note 18, at 147-55. The statutory provision incorporating these priorities is Social Security Act § 432(b), 42 U.S.C. § 632(b) (Supp. V, 1970).

³⁴ S. REP. No. 744, *supra* note 18, at 149.

³⁵ U.S. Dep't of Labor, Work Incentive Briefing Paper 2, Dec. 15, 1969.

³⁶ Social Security Act § 402(a)(8)(A)(ii), 42 U.S.C. § 602(a)(8)(A)(ii) (Supp. V, 1970).

³⁷ S. REP. No. 744, *supra* note 18, at 149.

³⁸ U.S. Dep't of Labor, The Work Incentive Program: First Annual Report of the Dep't of Labor to the Congress on Training and Employment Under Title IV of the Social Security Act 9, June 1970 [hereinafter cited as WIN First Annual Report]; BWTP Manual § 514.3.

³⁹ See WIN First Annual Report 9; BWTP Manual § 514.3.

⁴⁰ See WIN First Annual Report 11; BWTP Manual § 514.4.

⁴¹ WIN First Annual Report 8; BWTP Manual § 514.5.

⁴² WIN First Annual Report 10-11; BWTP Manual § 514.2.

⁴³ WIN First Annual Report 9; BWTP Manual § 515. "Educational services are provided to those recipients lacking the minimum education necessary to obtain a job or participate in further training." WIN First Annual Report 9. One part of the educational training provides a high school equivalency diploma ("General Educational Development," or GED); this type of education may continue even after the educational level of the enrollee enables him to begin training. See *id.* 5.

⁴⁴ Social Security Act § 402(a)(19)(D)(i), 42 U.S.C. § 602(a)(19)(D)(i) (Supp. V, 1970).

ized for a public purpose can employ these enrollees, who "in most instances . . . would no longer receive a welfare check."⁴⁵ Instead, they receive a payment from an employer for services performed. A supplemental grant will be made, if necessary, to bring their wages to a level twenty percent above their welfare grant level.⁴⁶ They are also reimbursed for any expenses incurred due to participation in the program.⁴⁷ If an enrollee's employability development plan bogs down, he may be sidetracked, perhaps for months, in a "holding" status;⁴⁸ no incentive payments are made to these enrollees.

In some respects WIN is an innovative manpower program. The financial incentive is a noteworthy departure from previous antipoverty programs,⁴⁹ and WIN provides an organized approach to provision of manpower services which other antipoverty manpower programs provide separately. The concept of an employment team has been found particularly effective in providing assistance to multiproblem welfare recipients.⁵⁰

But like the CWT Program, which was intended "to enrich and expand [manpower] programs and provide various services which would help rehabilitate the . . . recipients"⁵¹ but which actually resulted in "little training and meaningless work experience,"⁵² WIN has encountered numerous difficulties.⁵³ A recent evaluation indicates that the chronically unemployed rarely successfully complete the WIN training programs and find stable employment.⁵⁴ What were innovations on paper have often not materialized. For example, the highly touted concept of an employability team providing individualized atten-

⁴⁵ S. REP. NO. 744, *supra* note 18, at 150.

⁴⁶ Social Security Act §§ 402(a) (19) (D) (i), (E) (ii), 42 U.S.C. §§ 602(a) (19) (D) (i), (E) (ii) (Supp. V, 1970).

⁴⁷ Social Security Act §§ 402(a) (7), (19) (D) (ii), 42 U.S.C. §§ 602(a) (7), (19) (D) (ii) (Supp. V, 1970).

⁴⁸ See WIN First Annual Report 8, 10, 30-32.

⁴⁹ Under title V of the Economic Opportunity Act, any earnings were deducted from the welfare grant. Cf. 42 U.S.C. § 2981 (1964), *as amended*, (Supp. V, 1970) (title V not included in income disregard provision of the Act). "These deductions [were] tantamount to a 100 percent tax on income and therefore discourage[d] any effort to secure employment. The system may actually [have] penalize[d] efforts on the part of recipients to attain economic independence." S. LEVITAN, *ANTIPOVERTY WORK AND TRAINING EFFORTS: GOALS AND REALITIES* 99 (1967).

⁵⁰ WIN First Annual Report 4-7.

⁵¹ S. LEVITAN, *supra* note 49, at 68.

⁵² Hausman, *The AFDC Amendments of 1967: Their Impact on the Capacity for Self-Support and the Employability of AFDC Family Heads*, 19 LAB. L.J. 496, 506 (1968). WIN is "an old program under a new label." *Id.* Other older work relief programs have manifested similar failures. See S. LEVITAN, *supra* note 49, at 74.

⁵³ Auerbach Corporation, Report on WIN Program: Supplement to Oral Presentation, pt. 2, at 4, Apr. 24, 1969 [hereinafter cited as Auerbach Report].

⁵⁴ *Id.*

tion has frequently not been realized. "Some [local WIN offices] use 'assembly line' tactics, keeping enrollees together in 'classes' and sending them through the same sequence of [pre-occupational training] components at the same pace."⁵⁵ In some areas the team concept has been altogether abandoned, sometimes because of friction among team members over seniority rights in decisionmaking.⁵⁶ When teams are used, enrollee contact with all of the members (particularly with the manpower specialist) is often negligible.⁵⁷

Ideally the employability development plan would bring to an enrollee's aid the combined talent of the members of the team. But such plans may never be drawn for some enrollees. In the "great majority" of cases examined by one group of researchers, the files contained no employability plans at all.⁵⁸

The orientation component of pre-occupational training in most cases apparently serves the highly useful function of introducing previously unemployed recipients to the world of work. But "[o]rientation is sometimes used thoughtlessly as a convenient catch-all for enrollees which enables the WIN staff to 'buy time' to develop employability plans."⁵⁹ When this component is incorrectly used, its value is quickly lost. In some cases orientation training appears to the enrollees as merely a personal attack or stigma where the employability team is "trying to tell me I don't dress right, or talk right" for little reason at all.⁶⁰

The educational training component is likewise used as a holding ground for enrollees. Its relation to employability is sometimes doubtful.⁶¹ Some WIN offices use traditional classroom techniques which may make some recipients feel that they are "going back to school" rather than training for a job. On the other hand, some WIN education programs begin at too advanced a level for the recipients.⁶²

The occupational training programs have also run into trouble. Studies suggest that job training has not taken into account enrollees' existing skills, and that enrollees are forced to enter training classes below their level.

⁵⁵ Auerbach Briefing 6. *But see* Division of Program Review & Analysis, Office of Evaluation, U.S. Dep't of Labor, WIN Program Review After One Year 2, Oct. 22, 1969 [hereinafter cited as WIN Review].

⁵⁶ Auerbach Report, pt. 2, at 5.

⁵⁷ *Cf. id.*; WIN Review 25.

⁵⁸ Auerbach Report, pt. 2, at 6; *see* WIN Review 2.

⁵⁹ Auerbach Report, pt. 2, at 7.

⁶⁰ *Id.*

⁶¹ *Id.*, pt. 1, at 9.

⁶² *Id.*, pt. 2, at 7. "Programs for both Basic Education and High School Equivalency have been largely 'standard' packages, which may fail to meet the needs of welfare recipients." WIN First Annual Report 30-31.

[V]irtually no accommodations are made for either unconventional past experience or past training Little attempt was made to build on past enrollee experience, even though some enrollees listed "substantial work experience in the field of his (their) vocational choice." After duly noting same, [employability teams] went right ahead and enrolled people in training for that very field: a machinist in a machinist's course Previously trained people fared worse. Despite protestations, one young lady who had taken typing in high school and graduated less than a year ago was enrolled in a clerk-general course and promptly typed fifty-seven words per minute in the first of twenty-six weeks. Other clients fully or partially trained by OIC [Opportunities Industrialization Centers], EOA [Economic Opportunity Act], and other agencies were often assigned to the same fields they had allegedly trained for. On the basis of test results, all started at the beginning of these courses. Three months in clerk-general at OIC . . . counted nothing.

The area of vocational choice provides the worst example of the "beneficent" manipulation of clients by WIN employees on the basis of unrevised, outmoded and often inapplicable standards.⁶³

III. MEASURES OF SUCCESS

Behind the WIN program lay Congress' belief that many adult AFDC recipients were immediately employable without training or at least immediately trainable for work.⁶⁴ By the end of fiscal 1970, 150,000 AFDC recipients were to have been trained by WIN; by the end of fiscal 1971, an additional 190,000. By the end of fiscal 1972, a cumulative total of 757,000.⁶⁵ These estimates appear slightly ridiculous today: in fact the WIN selection process has not uncovered a sizeable body of recipients appropriate for the program.⁶⁶ Table I shows the number of recipients eliminated from consideration at each step of the selection process. The figures include the first two years of WIN's operation, when presumably most of the appropriate recipients would be discovered and enrolled in WIN.

⁶³ Auerbach Corporation, Resident Observation: The Work Incentive Program, Florence Office, Los Angeles County 6-18 to -19, Mar. 15, 1970 (report submitted to Office of Evaluation, Manpower Admin., U.S. Dep't of Labor).

⁶⁴ See notes 18-20 *supra* & accompanying text.

⁶⁵ CONF. REP. No. 1030, *supra* note 18, at 59. To date, "the program has had a history of missed estimates and revised estimates, only to be missed again." F. Arner, *supra* note 18, at 74. For other estimates of the number of WIN enrollees, see note 18 *supra*.

⁶⁶ The Labor Department's estimate of 150,000 trainees by the end of fiscal 1970 was revised in 1969 to 77,000. The actual number of trainees by the end of fiscal 1970 was 42,000. FINANCE COMM. STAFF MATERIAL 2-3.

TABLE I⁶⁷

AFDC RECIPIENTS AND WIN ENROLLEES

<i>Total Adult AFDC Recipients</i>	<i>AFDC Recipients Assessed</i>	<i>Appropriate for Referral by State Welfare Agency</i>	<i>Actually Referred by State Welfare Agency</i>	<i>WIN Enrollees After Labor Dep't Reevaluation</i>
2,150,000	1,810,578 (84.2% of total)	374,177 (17.4% of total) (20.7% of assessed)	282,380 (13.1% of total) (15.6% of assessed)	164,348 (7.6% of total) (9.1% of assessed)

Figures as of May 31, 1970

As the figures illustrate, the high elimination rate at each stage of the selection process means that only a small percentage of the adult AFDC population is ultimately enrolled in WIN for either work or training. Of the 1,810,578 assessed as of May 31, 1970, only 164,348 adults—7.6 percent of the adult AFDC population, 9.1 percent of those assessed—have been found enrollable in WIN. To meet the prediction of 757,000, the number of appropriate recipients must increase dramatically; but, barring an unforeseen growth in AFDC rolls, the potential for expansion of the program appears slight.

The error of the congressional assumption about the nature of the AFDC population is also demonstrated by comparing the number of enrollees placed in jobs with the number placed in occupational and pre-occupational training.

TABLE II⁶⁸

PLACEMENT OF ENROLLEES

<i>WIN Enrollees After Labor Dep't Reevaluation</i>	<i>Em- ployed</i>	<i>Occu- pational Training</i>	<i>Pre-occu- pational Training</i>	<i>Holding</i>	<i>Dropout</i>
209,761	34,181 (16.3%)	31,318 (14.9%)	32,237 (15.4%)	27,118 (12.9%)	84,907 (40.5%)

Figures as of October 31, 1970

As shown by Table II, as of October 31, 1970, only 34,181 were employed. This represents 16.3 percent of the total enrollment, 1.9

⁶⁷ Monthly Status Reports for WIN (May 31, 1970).

⁶⁸ The data appears in Division of Reports Analysis, Office of Manpower Mgmt. Data Systems, Manpower Admin., U.S. Dep't of Labor, WIN Program Data, Transmittal No. 97, at 1 of 15, Dec. 16, 1970 [hereinafter cited as WIN Program Data], except for the "employed" figure. This figure was calculated by adding 12,881 participants who have not completed their follow-up counseling to the 20,397 who have completed the job entry period and the 903 in special works projects. Telephone interview with Richard Shirey, Manpower Specialist, Manpower Admin., U.S. Dep't of Labor, Jan. 4, 1971.

percent of the total assessed (that is, of the total assessed as of May 31, 1970, as indicated in Table I; the percentage would be less as of October 31, 1970, because more recipients will have been assessed),⁶⁹ and 1.6 percent of the total adult AFDC population (also as of May 31, 1970). Moreover, 24 percent of the AFDC recipients referred to WIN (as of August 1969) had been out of work fourteen weeks or less,⁷⁰ indicating that they likely could have returned to the labor market without WIN's efforts or training.

Of those referred but not employed, 31,318 (14.9 percent) were receiving occupational training and 32,237 (15.4 percent) were receiving pre-occupational training. Thus, of those in training, 50.7 percent were involved in pre-occupational training, not yet ready for occupational training. Of those 32,237 in pre-occupational training, 21,552⁷¹ (33.9 percent of all those in training) were in the basic education and general educational development programs. Thus, of the total WIN program, presumably filled with the most employable or trainable of the adult AFDC population, 10.3 percent of those enrolled have been placed in programs indicating that they need basic educational skills before job training or employment can even begin.

The dropout rate of WIN enrollees is another indication of the erroneous assumptions made about the employability or trainability of the adult AFDC recipients. There have been 84,907 dropouts as of October 31, 1970. Of these, 21,400 (25.2 percent) left without good cause and 63,507 (74.8 percent) left for good cause.⁷² The high rate of failure for good cause may indicate that too many referrals are in fact inappropriate for WIN. Those dropouts without good cause may also have been inappropriate for referral and, once forced into WIN training, so frustrated and demeaned that they risked the loss of welfare grants rather than continue.

Supporting the assertion that many dropouts were inappropriately referred is the correlation of the dropout rate with the length of time spent in holding.⁷³ Enrollees in holding often present difficult training problems which rather than solved are avoided by delay. "The difficult cases continue to be in holding . . . without any immediate goal."⁷⁴ The WIN dropouts generally had spent more time in holding than had the successful enrollees. The median holding time for WIN graduates was about six weeks; for dropouts, thirteen weeks.⁷⁵

Thus the congressional assumption of a large body of employable and trainable AFDC recipients has not proved correct. Not only have

⁶⁹ The figures on assessments are available only as of May 31, 1970. Shirey interview, *supra* note 68. Thus the comparisons made are not exact.

⁷⁰ WIN Review 3.

⁷¹ WIN Program Data 1 of 12.

⁷² *Id.* 1 of 15.

⁷³ See text accompanying note 48 *supra*.

⁷⁴ Auerbach Report, pt. 1, at 9.

⁷⁵ WIN First Annual Report 18.

very few AFDC recipients been found appropriate for referral to WIN, but those who have been referred are likely to require fundamental pre-vocational training prior to vocational training or employment. Further, the number of referrals with even the same low level of skills as the current enrollees may be expected to drop rather than rise because most of the employable recipients have already been taken from the welfare rolls.

The congressional assumption that WIN would train its enrollees in skills or jobs for which there is a demand in the economy has also proved wrong: WIN training often fails to provide the enrollees with new skills, and the skills that it does provide are those least in demand in the economy,⁷⁶ especially during this period of economic re-trenchment.

As already noted,⁷⁷ WIN enrollees are not being trained for the right jobs for their skills, and are often enrolled in training classes below their skill level. And even after they have purportedly been trained, they do not easily enter the labor market.

A notably increasing proportion of the growing numbers in component holding are those reported to have been last engaged in institutional training. The August 1969 report shows 18.4% in this situation. One wonders if these enrollees generally are job ready. Having been trained through institutional vocational education, the next step normally is placement. . . . [S]pecial attention is needed in local offices in order that institutional training will be relevant to live employment opportunities and that WIN enrollees will be exposed to such job opportunities.⁷⁸

The Department of Labor has adopted the policy that WIN training must be oriented toward jobs in the "demand occupations" either in the long or short run, and toward "career ladder" jobs rather than dead-end, low-paying jobs.⁷⁹ But WIN training programs have been

⁷⁶ The three leading occupational categories for employed WIN enrollees are: clerical and sales (21.5% of total employed), service (20.6%), and structural work (14.2%). Office of Manpower Mgmt. Data Systems, Manpower Admin., U.S. Dep't of Labor, Results of Special Occupational and Wage Survey of Employed WIN Program Participants in Follow-up Status Conducted in Six States as of August 31, 1969, at 3 [hereinafter cited as Six-State Study], discussed at note 89 *infra*. In October 1970, the unemployment rate for clerical workers was 4.7%, up 1.3% from October 1969; for sales workers, 4.3%—up 0.8%. These two categories had the highest unemployment rate and showed the largest increase of all white-collar occupations. The unemployment rate for service workers was 5.8%, up 1.6%. Among construction workers, the rate was 11.9% in October 1970, up 4.6% from the preceding October, the highest rate and highest rise of any industry. MONTHLY LAB. REV., Dec. 1970, at 69 (table 8) (published by Bureau of Labor Statistics, U.S. Dep't of Labor).

⁷⁷ Text accompanying notes 58-63 *supra*.

⁷⁸ WIN Review 13.

⁷⁹ For example, the Manpower Administration does not approve training programs for domestics. When Delaware attempted to establish such a training program Louis Day, WIN Regional Director, Manpower Administration, stated that the

modelled after earlier programs also intended to train the chronically unemployed. Studies made during the first eighteen months of WIN's operation indicate that WIN does not vary substantially from these past programs, which have been criticized for providing "little training experience and meaningless work experience."⁸⁰ And the preponderance of women enrollees has created a serious problem in training enrollees for "demand occupations":

The local job market . . . particularly the rural areas, hold[s] few jobs for women without advanced clerical skills. WIN staff in these areas anticipated that it would be a matter of years bringing most WIN enrollees up to the required skill levels. The few jobs available to most of the women enrollees were primarily limited to low paying, highly unstable service jobs such as domestics or charwomen.⁸¹

Furthermore, those most liable to be laid off or unemployed, especially in a slumping economy, are those who populate the WIN program. The President's Commission on Income Maintenance found that "young people without work experience, people with low educational attainments, and members of minority groups subject to discrimination will be particularly handicapped in their search for employment."⁸² In April 1970, the WIN population was 71 percent female,⁸³ 40 percent black,⁸⁴ and 22 percent Spanish surnamed;⁸⁵ 68 percent had not completed high school, 25 percent had not even entered high school,⁸⁶ and 22 percent were under the age of 22.⁸⁷

intent of WIN was to assist enrollees in securing and retaining employment with possibilities for advancement. The purpose of WIN is not just training or employment; it is employment with a future. Interview with Louis Day, Middle-Atlantic Regional Director of WIN, Manpower Admin., U.S. Dep't of Labor, in Phila., Dec. 15, 1969. An examination of the Connecticut WIN program in 1969 found that 473 recipients were in some kind of training; only 233 in vocational training and the rest in prevocational training. Of the 233, 75 were being trained as hairdressers (raising the question whether the Connecticut job market could absorb 75 more hairdressers). Other major categories included 17 being trained as licensed practical nurses, 20 as keypunch operators, and 15 as clerk-typists. Arthur D. Little Co., Connecticut Welfare Study 190, 193 (1969). Louis Houff, WIN Manpower Development Specialist, Manpower Administration, indicated that the jobs for which many enrollees were being trained in Connecticut did not comply with the career ladder criteria. Telephone interview with Louis Houff, Mar. 2, 1970.

⁸⁰ Hausman, *supra* note 52, at 506.

⁸¹ Auerbach Report, pt. 2, at 9.

⁸² PRESIDENT'S COMM'N ON INCOME MAINTENANCE PROGRAMS, POVERTY AMID PLENTY: THE AMERICAN PARADOX 25-26 (1969) [hereinafter cited as PRESIDENT'S COMM'N ON INCOME MAINTENANCE].

⁸³ WIN First Annual Report, table 2. On employment difficulties for women heading families, see PRESIDENT'S COMM'N ON INCOME MAINTENANCE 30.

⁸⁴ WIN First Annual Report, table 2.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

The economic slowdown has also caused a reduction in on-the-job training programs which are no longer supported by employers forced to lay off longtime employees.⁸⁸

The second assumption has thus proven incorrect. The failure can be ascribed partly to inadequate training programs which fail to prepare enrollees properly, and must be ascribed partly to the contradictory policies of training people for jobs while attempting to eliminate those jobs from the economy.

The third assumption—that the participants in the WIN program who found employment would earn enough to make assistance unnecessary—has likewise proved unwarranted. A special six-state Department of Labor survey of 4,623 employed WIN participants⁸⁹ in follow-up status⁹⁰ found that only 42.2 percent of the men and 9.9 percent of the women had sufficient earnings to be ineligible for assistance. Median hourly wages for men were \$2.47 but only \$2.02 for women.⁹¹ The low figures for women enrollees reflect the generally lower earnings of women in our society,⁹² but they are especially significant for the WIN program: 71 percent⁹³ of WIN enrollees and 95 percent of all adult AFDC recipients are women.⁹⁴

Finally, Congress also assumed, as indicated by the statement of goals in the Act itself, that “the example of a working adult in these [AFDC] families will have beneficial effects on the children in such families.”⁹⁵ Apparently these beneficial effects were presumed to flow from the “sense of dignity, self-worth, and confidence” an AFDC

⁸⁸ See *id.* 31.

⁸⁹ Six-State Study 1. The six states were California, Colorado, Illinois, New York, Pennsylvania, and Washington. Of the 4,623 individuals surveyed, 2,100 were from California.

⁹⁰ For a description of “follow-up” status, see text accompanying note 35 *supra*.

⁹¹ Six-State Study 7. Average hourly earnings were as follows:

Average Hourly Earnings	Number of Participants	Percent
under \$1.60	180	3.9
\$1.60-1.99	1,312	28.4
\$2.00-2.49	1,493	32.3
\$2.50-2.99	887	19.2
\$3.00 or more	751	16.2

⁹² More than one third of the 26.9 million women employed in the United States in 1967 had a “low-paying” position, such as saleswoman, service worker, laborer, and farm worker. In 1965, the median annual income of women who worked full-time at such jobs was \$2,784. Carter, *The Employment Potential of AFDC Mothers: Some Questions and Some Answers*, 6 WELFARE IN REV., July-Aug. 1968, at 1, 3 (citing Women’s Bureau, U.S. Dep’t of Labor, *Women in the Labor Force*, 1966 and 1967, Jan. 31, 1968). Women from poor families are even more limited: “In 1966 almost 50 percent of all employed white women heading poor families and 75 percent of nonwhite women heading poor families worked in service occupations, one of the lowest paid groups. For many such women, Public Assistance offers a more secure existence.” PRESIDENT’S COMM’N ON INCOME MAINTENANCE 30.

⁹³ WIN First Annual Report, *supra* note 38, at table 2 (as of Apr. 30, 1970). “The data suggest that many welfare mothers, after training and employment, will not be able to make enough wages to bring their families entirely out of poverty.” *Id.* 22-23.

⁹⁴ WIN Review 2.

⁹⁵ Social Security Act § 430, 42 U.S.C. § 630 (Supp. V, 1970).

parent would derive "from being recognized as a wage-earning member of society,"⁹⁶ or simply from the mere fact that the parent worked. But one study suggests that "the mother's working is only one of many factors impinging on children and . . . on the whole it is a secondary rather than a primary factor, so far as child development and adjustment are concerned."⁹⁷ Another researcher states:

Probably much depends upon the nature of the mother's work and the status it confers. Perhaps the example of serious interest in outside work on the mother's part makes both her sons and her daughters value such work more highly.⁹⁸

The WIN program is not altogether conducive to inspiring in recipients either a "serious interest" in or respect for work. A mother in effect forced by the WIN program to leave her children for a substantial part of the day and work at a possibly demeaning job is unlikely to bring home at the end of the day an appreciation of the inherent value of work. If the mother is bitter and resentful about her job, her children will probably not grow up enamored of the world of work. The "dignity, self-worth, and confidence" assumed by Congress to flow from "being recognized" as a worker will in fact never attach to a mother unhappy with her mandatory job and her loss of supervision over her children. Her perception of herself may change only to the extent that her estimate of her helplessness increases. As a WIN consultant to the Department of Labor concluded:

There is a tendency to feel that any job is better than no job at all. This is not necessarily the view held by the recipients, nor is it a valid axiom around which a vocational program can be built. In the first place, certain classes of jobs are viewed as dead-end and meaningless by applicants Forcing people to accept unappealing, low-pay, dead-end jobs will not result in program success.⁹⁹

CONCLUSION

Were the WIN program simply a well-intentioned failure to provide jobs for the country's indigent, that would be cause enough for lament. But WIN may indeed produce positive harm. For example, the WIN incentive payments, on the whole probably an advantage of the program, result in unfairness to the nonwelfare working poor (and may exacerbate any present hostility between the welfare and non-

⁹⁶ *Id.*

⁹⁷ E. HERZOG, *CHILDREN OF WORKING MOTHERS* 30 (Children's Bureau, Social Security Admin., U.S. Dep't of Health, Educ., & Welfare Pub. No. 382-1960, 1960).

⁹⁸ Maccoby, *Effects Upon Children of Their Mothers' Outside Employment*, in *WORK IN THE LIVES OF MARRIED WOMEN* 157 (1958) (Nat'l Manpower Council Conference proceedings).

⁹⁹ Auerbach Briefing, *supra* note 18, at 4.

welfare poor) because a WIN participant working at a job paying the same wage as a nonparticipant has a higher income than the latter (because the WIN participant receives an incentive payment in addition to his wage).¹⁰⁰

The mandatory character of WIN is another harmful aspect of the program, resulting in yet another encroachment on recipient autonomy by those purporting to know recipients' best interests best. This point was made in various forms during the congressional hearings. Secretary of Labor Willard Wirtz stated:

[I]n my judgment . . . an absolute statutory conditioning of welfare payments on the acceptance of work or work training would be unwise and impracticable.

. . . .

I note . . . the lesson of experience from the administration of most of the existing work and work training programs. One of the hardest problems is getting through with these programs to those who need them most. This problem could well be aggravated rather than made easier by a general rule of compulsory training.¹⁰¹

Mitchell Ginsberg, presently Dean of Columbia University School of Social Work, stated:

There is no doubt that employment and training programs . . . are desirable, and that aggressive efforts to educate low-income families to their value are crucial. But to require, rather than to make available, these resources as a condition for continued financial assistance opens such a wide area of discretion that it constitutes an open invitation to abuse.¹⁰²

That these voices were not heeded is perhaps indicative of the most harmful aspect of WIN: its reiteration and propagation of erroneous assumptions about welfare recipients and about the causes of poverty. WIN intervenes in the poverty cycle at the locus of the individual rather than the labor market. So long as poverty is viewed as simply a manifestation of personal failure, congressional antipoverty programs will be a waste of bureaucratic energy.

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¹⁰⁰ Congress clearly recognized this problem, but decided that the remedy was too expensive:

The committee appreciates the objections to this type of situation which can be made; but the alternative would have increased the costs of the proposal about \$160 million a year by placing people on the AFDC rolls who now have earnings in excess of their need for public assistance as determined under their State plan. In short, the various provisions included in the committee's bill are designed to get people off AFDC rolls, not put them on.

S. REP. No. 744, *supra* note 18, at 158.

¹⁰¹ *Senate WIN Hearings, supra* note 19, pt. 2, at 796.

¹⁰² *Id.* 945.